App F IX—4

Previous References

1955 56 (Con)

File No 144 55

Serial Nos 1, 2

Later References

MYSORE GOVERNMENT SECRETARIAT

Serial Nos 2

P 19(E)

Part B for June 56

SUBJECT

Application of Rule 21 Schedule II to the Corporation

WD 05150—GPB—35 000—24 8 56 L S191 23 6 56

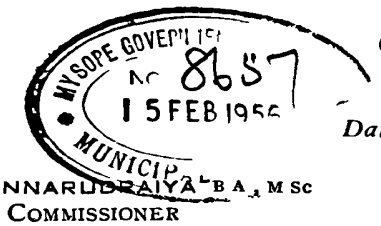
The Commissioner C C B (thro the Mayor)

In the matter of information in

Recommended 6/11/56

CORPORATION OF THE CITY OF BANGALORE

No C a /55-56
Encl 1/



CORPORATION OFFICES
BANGALORE

Dated 9th February 1956
11th

FROM

D R CHENNARAIYA, B A, M Sc
COMMISSIONER

To & W/L

CORPORATION OF THE CITY OF BANGALORE
BANGALORE

The Secretary to Government,
Education and Local Self-Government Departments,
BANGALORE

SIR

Cm 144 55-1.

Subject - Application of Rule 21, Schedule II to the Corporation Act

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I write to state that instances, whereby Rule 21, Schedule II to the Corporation Act being invoked freely by the Corporation Councillors irrespective of the merits of the case are on the increase day by day I narrate below a few typical cases for the information of Government

(1) One Sri K Soma has applied for grant of a license to run a restaurant at premises No 77/1, Ram Mohanpura, Sriramapuram Since the place is situated in the revenue land and the building thereon is an unauthorised one, the license was refused Under clause 3 (a) of Bye-law No 35, the party appealed to the Standing Committee (Health) against the above refusal order The Standing Committee (Health) rejected the appeal on the same grounds Sri K Devaya, Corporation Councillor has requested the Mayor to place the subject before the Corporation under Rule 21

(2) One Sri M T Punjabi applied for grant of a license to run a tea shop at premises No J 33, Avenue Road Cross, Bangalore City The place is not at all suited to locate a tea or coffee shop much less a sweet-meat stall Family people are residing on the first floor of the premises and also in the immediate neighbourhood who will be greatly inconvenienced by grant of a license for the premises Further there are objections from all the neighbourers and hence the license was refused The party appealed to the Standing Committee (Health) and the Committee also

rejected the appeal on the same grounds. Sri M Anjaiah Naidu, a Corporation Councillor, sent in a letter on 5-3-1955 in the first instance to place the subject before the Corporation under Rule 21. On 12-8-1955 he has sent another letter withdrawing his previous letter dated 5-3-1955 and again in his letter dated 16-9-1955, he states that his withdrawal letter dated 12-8-1955 be treated as cancelled and that the subject be placed before the Corporation according to his original letter filed under Rule 21.

In respect of the above two cases, the powers of the Standing Committee are final as regards appeal as described below -

Section 330 of the Act reads as follows -

Appeals

330. Appeals from Commissioner to Standing Committee.

(1) An appeal shall lie to the Standing Committee from -

(a) any notice issued or other action taken or proposed to be taken by the Commissioner -

(i) under Sections 140, 187, 195, 196, 197, 199, 252, 253, 264 (3), 265 (1), 266 (11), 271 (1), 272, 273, 280, 289, 290, 291, 298, 299 and 301,

(ii) under any bye-law concerning house-drainage or the connection of house-drains with municipal drains, or house-connections with municipal water-supply or lighting mains,

(b) any refusal by the Commissioner to grant permission to construct or reconstruct a building under section 246 or 253,

(c) any refusal by the Commissioner to grant a permission under sections 187, 190, 209 or 293, or

(d) any refusal by the Commissioner to grant a license under sections 233, 297, 303 or 315 (2) or

(e) any order of the Commissioner made under section 335, sub-section (1), suspending or revoking a license,

(f) any other order of the Commissioner that may be made appealable by rules under Section 365.

(2) If, on any such appeal, the standing committee reverses or substantially modifies any action taken or proposed to be taken by the Commissioner or any order passed by him, he may,

within one month of the date of such decision, refer the matter to the Corporation, and pending the decision of the Corporation on such reference, the Commissioner shall not be bound to give effect to the decision of the standing Committe

The decision of the standing committee or where the matter has been referred to the corporation as aforesaid, the decision of the Corporation shall be final "

It will be seen from the above that the powers of the Executive and the standing Committees in certain cases are final and cannot be revoked

Rule 21, Schedule II to the Act reads as follows

Rule 21

A | Every resolution of a standing committee shall be made available to every member of the Corporation within fifteen days from the date of the passing of such resolution and the Corporation may, on a motion by any member of the Corporation modify or amend or revoke any such resolution "

construction of this Rule 21 is so general that it takes away the powers vested with the Commissioner or the Standing Committee as contemplated under Section 336 Consequently, the Councillors get the privilege of applying this Rule 21 in almost all cases irrespective of the merits of the case at this rate there will be no finality and the powers vested with the executive and the various Standing Committees become inoperative, resulting in delay and tend to inefficiency at every stage A reference was made to the Corporation Advocate and his opinion is appended to this letter

It seems necessary and desirable that application of Rule 21 will have to be specifically determined in the circumstances stated above and since there is some ambiguity, I request that the Government be pleased to clarify the matter as to whether the resolutions passed by the Standing Committees affirming or rejecting the orders of the Executive under powers vested with them come under the purview of Rule 21 and, whether it is obligatory that each one of them should be placed before the Corporation for a final decision

Forwarded with compliments

Yours faithfully,

(K KRISHNAPPA)
MAYOR

(D R CHANDRASEKHARA)
COMMISSIONER

9286

Returned With Compliments

I have carefully perused the papers in the file and the relevant provisions under Act Section 286 enjoins that a person shall not keep a restaurant, tea shop or coffee shop without a license granted by the Commissioner The section also empowers the Commissioner to cancel or suspend any license granted by him for breach of the conditions therein

Section 386 provides for appeals to the Standing Committee against orders passed by the Commissioner under certain sections noted therein Section 286 is not however one among them The Bye-law (No 35) provides that if the license is refused the party can appeal to the Standing Committee (Health) The party has acted accordingly and the Standing Committee has confirmed the orders of the Commissioner

Sub-Section (2) of Section 386 provides that in respect of appeals provided for thereunder the decision of the Standing Committee shall be final except in a case where the Commissioner refers the matter to the Corporation The decision of the Health Committee under the Bye-law No 35 is not one contemplated under Section 386 (2) For this reason it cannot be regarded as final The wording of Rule 21 under Schedule II is so general and comprehensive that it is open to any member of the Corporation to obtain a copy thereof and move for a modification amendment or revocation of the Resolution I wish this previlege is restricted only to certain matters and the action ta en by the Commissioner in matters like the one under reference and the alike, are exempted from the scope of the Pule

The order of the Commissioner or the Committee cannot therefore be regarded as final on the matter in question for the reasons and circumstances stated by me

Sd w Ekambaram,
Corporation Advocate,
Civil Area

Bangalore
Dated 10-10-1955

Copy"

N Ekambaram
for Commissioner

TNL/-

CORPORATION OF THE CITY OF BANGALORE

5

C S/55-56

CORPORATION OFFICES,
BANGALORE

Dated 26th April 1956

EDUCATION L C
2847
MYSORE C I I C U I T
1 MAY 1956
MUNICIPAL BRANCH

FROM

THE COMMISSIONER,
CORPORATION OF BANGALORE
BANGALORE

To

The Secretary to the Government of Mysore,
Education and Local Self-Government Departments,
BANGALORE.

SIR

Subject - Application of rule 21, schedule II to the Corporation Act

---

I invite kind reference to my letter No C S/55-56 dated 1-2-1956 on the above subject and request the favour of an early reply

Yours faithfully,

D R Venkatachalaya

(D C CHANDRAIYA,)
COMMISSIONER

26.4.56

26-4-56

The connected file herein D.No 8637/ml on the subject is submitted to day to Asst Secy and its return will be awaited

2/5/56

Appendix F G —1]

SUBJECT Application of Rule 21 schedule II to the Corporation Act

Diary No of letter replied to 786/mel

Mysore Government Secretariat

( )

the *195*

Date of issue

Signed by

List of enclosures

Copied by

Examined by

Section C17

File No 144—55

Serial No 2

No L5791

To 23/6/56

The Commissioner Mysore

Sir

With reference to the correspondence ending with your letter No C9 155 58 dated 24/2/56 on the above subject I am directed to state that since the Legislature itself has inserted the rule by amending the Act, it cannot be challenged on the ground of inconsistency with any other provision of the Act as the Corporation is the principal authority vested with the powers of administering the municipal affairs, Rule 21 confers on it a power to modify, amend or revoke

any resolution of a Standing Committee. This rule seems to have been inserted to give the Corporation a kind of reversional power over the actions of Standing Committees, presumably to prevent injustice. It is not necessary to get every resolution of the Standing Committees confirmed by the Corporation. The resolution will be effective unless modified or revoked by the Corporation under rule 21.

Y.I.

Mr Secy to Govt
Edn & L.S.G. Depts
2
18/6

L5191
23/6/56

The Education & L S G Departments

The Commissioner,
Corporation of the City of Bangalore
(thro' the Mayor)

ir,

Subject Application of Rule 21, schedule 11 to the Corporation Act

With reference to correspondence ending with your letter No C9/55-56 dated 26/27-4-1956 on the above subject, I am directed to state that since the Legislature itself has inserted the rule by amending the Act, it cannot be challenged on the ground of inconsistency with any other provision of the Act As the Corporation is the principal authority vested with the powers of administering the municipal affairs rule 21 confers on it a power to modify, amend or revoke any resolution of a Standing Committee This rule seems to have been inserted to give the Corporation a kind of revisional power over the actions of Standing Committees, presumably to prevent injustice It is not necessary to get every resolution of the Standing Committees confirmed by the Corporation The resolution will be effective unless modified or revoked by the Corporation under Rule 21

Yours faithfully,

(V Hanumanthappa)
for Secretary to Government,
Education & L S G Departments

knr-2/21656

786/ml 20/6 ^ B20/6

CORPORATION OF THE CITY OF BANGALORE

No C S /55-56

CORPORATION OFFICES,
BANGALORE

Dated 1st June 1956

FROM

THE COMMISSIONER
CORPORATION OF BANGALORE
BANGALORE

To

The Secretary, to Government of Mysore,
Education and L S G Departments,
BANGALORE

SIR

Subject - APPLICATION OF RULE 21, SCHEDULE II TO THE CORPORATION ACT.

I invite kind reference to my letter No C S /55-56 dated 13-2-1956 and reminder dated 27-4-1956 on the above subject and request the favour of an early reply

Yours faithfully,

D R Chennarudraiya

COMMISSIONER
(D R Chennarudraiya)

16-5-56

Mysore Government Secretariat

8657/Sec File No of 1955-6 [App F III 2

Serial No

To

The Commissioner C C B

Letter no C S/53-56 dated 9/11-2-56 Requests clarification in the matter of application of Rule 21 of Schedule II of the Corporation Act 1949

Submitted

1/ Rule 21 of Schedule II of the Corporation Act of 1949 empowers the Corporation to modify or amend or revoke any resolution of the Standing Committee As this Rule has been applied or frequently used even to matters on which the Commissioner or the Standing Committee have final powers, therefore the Commissioner feels that by the application of Rule 21, the final Powers vested in him and the Standing Committee under the Act, are encroached upon He therefore seeks clarification This is for clarification in consultation with the Law Department

Sgp

2/ The Commissioner seeks clarification whether the resolutions passed by the Standing Committee affirming or rejecting the orders of the Executive under the powers vested in them come under

Clarifications as to whether Rule 21 of Schedule II may be

File No 8657/one of 1955 to 2 Le 87/55-56 — Mysore Government Secretariat

Serial No

the ~~powers~~ powers of rule 21 of Schedule II to the Corporations Act and whether it is obligatory that each one of them should be placed before the corporation for a final decision

Rule 21 of Schedule II is read at 'A' in page 3 of the letter of the Commr. The rule provides for any resolution of a standing committee being modified or amended or revoked by the corporation unless Rule 21 is amended, there is perhaps no possibility of the resolutions of the standing committee being made final. In any case the Law Dept may be consulted

M. 29/2

3) Rule 21 seems to be contrary to the provisions of Act in as much the Act lays down that on certain matters, the decisions of the Comr & the Standing Committee are final whereas the Rule provides that any order of the Comr & Standing Committee can be got amended by the Corpn. The Law Dept may be requested to offer their remarks whether the Rule 21 is in accordance with the provisions of the Act or not

Secy (Edn & Lab) 9/3

4) U/s 6 (e) Remarks

Secy (Law) D 20/3/56 5) M 12/3

EDUCATION 16896 9 MAR 1956

SECRETARY TO GOVERNMENT LEGISLATIVE DEPARTMENT

WD 0 60—GE

Mysore Government
Secretariat

[App F III 2

Rule 21 of Schedule II of 195 File No 8487 / 8657

Serial No

LD 8523/Law Dept

Subject to the legal opinion now sought for, the case may be referred to the Law Branch

Secretariat
17 MAR 1956
Law Branch

Jang 16/3/56

JSR 16/3/56

Asst Secy Law 16/3/56

Mas

In Mkt 17/3

8 pts

A the validity of the Rule (Rule 21 of the Schedule to the Corporation Act), appears to be in question, the said audit will be requested to kindly make available copy of the Byelaw 35 mentioned in the para

Asst Secy Mkt 17/3

MMM 17/3

17/3

Cor ≡ V T

Please furnish a copy of Corporation bye-laws

Draft letter to the Commr of B requesting him to send a copy of the byelaw 35 as mentioned

Rs 28/3

28/3/56

Office copy of the printed (Book) bye-laws is the only one copy in this office

10) The byelaw 35 re regulation of hotels, boarding houses, rest houses etc as flagged in the Byelaws Book placed below for reference & return with the file with remarks

28/3/56

28/3

In Mkt 29/3

M 29/3

Asst Secy Law Dept

Note—Cont Sheet

8657/74 8810/Law

Clarification in Rule 21 of Sch II of Corp Rs

File No 2487/LD of 195

Mysore Government Secretariat

Serial No

1) The point for consideration is whether Rule 21 of the Rules framed under the Bangalore Corporation Act is contrary to the provisions of that Act

2) The subject matter referred to by the Commissioner relates to the grant of a licence to run a restaurant or a eating house. It is seen from Rule 76 that the same has been issued under Sec 56(1)(b) read with Section 268 of the Act. Section 268 relates to prohibition in respect of lodging houses except with under a license issued by the Commissioner. Neither of the Sections appear to have been referred to in Section 386 which provides for appeals from Commissioner to standing Committees. Section 386(2) provides that the order of the standing committee shall be final or where the matter has been referred to the Corporation, the decision of the Corporation shall be final. Rule 21 which provides for a motion being brought before the Corporation by any member that the resolution of the standing committee appears to exceed the scope of appeal referred to in Section 386. Whereas, where no appeal is preferred before the Corporation, the latter order of the standing committee, the latter order could be deemed to be final as provided for under Sec 386(2). Rule 21 of Schedule II provides for an appeal to the Corporation in every case where such motion is made by any member within fifteen days from the date of the passing of the resolution by the standing committee. In this view there appears to be little ambiguity in respect of the finality of an order passed by the standing committee, as the validity of the Rule is concerned, the legislation Dept may also be consulted

Law Secy 30/3/56

Asst Secy (Legis) 30/3

Sec K N Lg 31/3/56

31 MAR 1956

LEGISLATIVE DEPTT

SECRETARY TO GOVT

ISSUED

30/31/3

DEPARTMENT

Mas 31/3/56

WD 0960—GPB—P 4 8 1 30 000—21-5 55

Serial No

15) Reference is invited to the wording of Rule 21 of Schedule II

16) It does not provide for "appeal" as stated at 'A' in para 12. Rule 21 provides for the Corporation exercising the right of modifying amending or revoking any resolution of a Standing Committee. It is a right conferred on the Corporation as a whole but on the motion of any member of the Corporation to whom ~~of for~~ every resolution ~~passed~~ of a Standing Committee should be made available

17) Under the Scheme of the Corporation Act contemplates the Corporation being the principal organ and the other Standing Committees being subsidiary organs, there appears to be no contradiction in the provisions of Rule 21 of Schedule II

18) With reference to para 3 and 4 it is submitted that Rule 21 ~~which~~ as part of Schedule II which forms part of the Act

Note—Contn Sheet

Clarification re Rule 21 of Schedule II of Corporations

File No ___ of 195 — Mysore Government Secretariat

Serial No

2487 Law 8870 8857 Law

itself and it is not [illegible] a rule framed under the Act or [illegible] under the Rule making power. Simply called a Rule it does not lay all the attributes of a substantive provision of an Act like a section. In view of this above, it appears obligatory to comply with Rule 21 of Schedule II. The Rule does not also conflict with other provisions of the bye laws or the Act regarding appeal because, while the right of appeal is conferred on the party affected, the [illegible] and has to be exercised by him only the right conferred under Rule 21 enures on every member of the Corporation individually and the Corporation collectively and is not an appeal

19) Please put up with Legislative File No 38 51 & also L A Debates on the Amendment Bill of 1951

Jag 17/4/56

JSR 13/4/56

Mas 17/4/56

Sec B N JSR 17/4/56

17 APR 1956

270—GPB—P Z S 130 000—21-5 55

General and Revenue Secretariat

Clarification on re: Rule 21 of Schedule II [App F III]
re Corporation of Bel... File No ... of 19...
WIS5015452—GPB—PZS—40 CCC—1 1951

Serial No

Debates dated 16th March 20th, 28th March and 23rd May 1951

20) The Collection Legis 3851 is not readily available (Vide question 21(1)). The L.A. debates on the amendment Bill are full of Reference - para 19 Ref 21/4

21) It may be noticed that rule 21 was of Schedule II is a new rule inserted in the Act by Mysore Act XXVI of 1951. As the main collection containing the Bill is not readily available and there is nothing in the Debates about this amendment, the Administrative Sect may examine the circumstances leading to the making of the amendment after obtaining the file from the Public Works Secretariat

22) Since the Legislature itself has inserted the rule by amending the Act it cannot be challenged on the ground of inconsistency with any other provision of the Act. As the Corporation is the principal authority vested with the powers of administering the municipal affairs, rule 21 confers on it a power to modify, amend or revoke any resolution of a Standing Committee. This rule seems to have been inserted to give the Corporation a kind of reversional power over the actions of Standing Committees presumably to prevent injustices. It is not

NOTE—Contn Sh

Application of Rule Schedule II to the Corporation Act

File No 2487/20/56-R761/ of 19 8657/mc General and Revenue Secretariat

Serial No

not necessary to get every resolution of the Standing Committees confirmed by the Corporation. The resolution will be effective unless modified or revoked by the Corporation under Rule 21.

Mas
Law Secy 23/4/56.

23) Secy (L.S.A.) en 23/4/56

Mas 23/4/56

24) It is for orders whether the collection referred to above Legislative Rules to have been taken by the P.W. Br., may be ~~asked~~ requested to be made available, to discuss the ~~question~~ point in full details so as to give a correct interpretation of the application of the Rule 21 Schedule II of Corp. Act, or whether the Comm. ec B may be ~~advised~~ given reply in the lines of the opinion of Legs. Branch as at letter para (22) above.

25) Get the Collection referred to above

Ms 25/5 by 27/5/56

26) This may now be referred to P.W. Br. for making available the collection Legislative Rules 38 1951 referred to in Para (24) supra for reference

Ms 14/5/56

Under Secy
P W Branch

27 23/5

SECRETARY TO GOVT. 205 23/4/56 LAW DEPARTMENT

EDUCATION L.S. 1118 24/4

24/4 Mas

The book is kept in the branch & letter No. C1/57 to dated 27.4.56 for Comm. & B regarding orders in the matter

PUBLIC WORKS DEPARTMENT 15-70/B 7 MAY 1956 SECRETARIAT BOMBAY

Mysore Government Secretariat

Application of Rule 21 Sch II to the Corporation [App F III 2

File No Act of 195 1570 PWB

Serial No

(28) The collection Legs 38 51 - Sls 1-2 obtained from the Gl Records has been returned to the Records on 28 3 56 and has been acknowledged The requisition Slip given by me on 10 2 56 has also been returned to the Branch after cancellation This being the case, it is strange how the Gl Records could record on 18 4 56 on a requisition Slip sent by the Legs Br to the effect that the collection has been obtained by P U (B) Branch on 10 2 56 The Gl Records may be requested to trace & put up the collection

Legs 26/5/56

29) Supdt Rec Br) Sings 26/5/56

30) The collection Legs 38-51 Sls 1&2 is now put up, this may now be referred to Legs Br to mention the correct interpretation of the Rule 21 schedule II to Corpn Act — para (21) to (23) supra

Sd 14/6/56 Mrs 5/6 Asst Secy Legislation) 31) 5/6

32) It may be noticed that by clause 6 of the Bill, a new section 22-A was sought to be inserted requiring the approval of the Corporation for every decision of a standing Committee, for the reasons given in respect of this clause in para 35 of notes in Legs file 38 51 The Select Committee omitted clause 6 and inserted Rule 21 in schedule II to

Note—Court Sheet

Applicability of Rule 21, Schedule II to the Corporations Act

File No 2487 of 195

Mysore Government Secretariat

Serial No

to the Act The reasons for this modification are given in the Select Committee Report, and are in conformity with the note at para 22 supra

Mas 7/6/56
Law Secy)

33) Draft SR

Mas 11/6/56

34) Draft appln suitable reply will be given to the Comm ee B as at para (22) supra

12

35) Draft a reply incorporating the opinion at Para 22

14/6 16/6

16/6

36) draft reply to Comm ee B as put up Proposed

37) Issue

18/6 19/6

15/6

(Secy on tour)

25191/CM 1956-57 2 dated 23 6 56 Comm ee B for the Govt Informn as above

Letter No CS 55-56 dated 16 56 from the Comm ee B in the matter

38) Necessary orders have been communicated to the Comm ee B only on 23 6 56 This will be held after perusal

29/6/56 30/6

Received this 30/6

13/7/56

WD 0960—GPB—P 4 S 130 000—21-0 55

11—10